IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-02-2007

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

WRIT PETITION No.3354 of 2007

S.Jayakumar ... Petitioner

-Vs-

The Inspector General of Registration,
Chennai-28. ... Respondent

* * *

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the records of the respondent herein relating to his memorandum No.25281/81/2003, dated 03.01.2007 and quash the same.

For petitioner : Mrs.AL.Ganthimathi

For respondent : Mr.D.Srinivasan,
Govt.Advocate

O R D E R

The prayer in this Writ Petition is for issuance of a writ of certiorari, to call for the records of the respondent/ Inspector General of Registration, relating to his memorandum No.25281/81/2003, dated 03.01.2007, whereby the petitioner was given an opportunity of making representation on the penalty as proposed under Rule 17 (c) (i) (1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and further assured that any representation the petitioner would wish to make against the penalty would be considered by the respondent and also intimated that such representation should reach the respondent not later than fifteen days from the date of receipt of copy of the memorandum.

2. In the memorandum, it is stated that the petitioner has been convicted of a criminal charge under Section 7 of Prevention of Corruption Act,1988, and Section 13 (2) read with 13 (1) (d) of the Act and awarded a sentence of rigorous imprisonment for six months and a fine of Rs.2,000/-; in default to pay fine, to further undergo rigorous imprisonment for two months under Section 7 of the Act and

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rigorous imprisonment for one year and a fine of Rs.2,000/-; in default to pay fine, rigorous imprisonment for four months under Section 13 (2) read with 13 (1) (d) of the Act, by the Special Judge-cum-Chief Judicial Magistrate, Namakkal, in C.C.No.5 of 2004, on 27.11.2006 and, on that basis, the respondent proposed to impose a penalty of dismissal on the petitioner.

3. Learned counsel for the petitioner strenuously contended and heavily relied on a decision of this Court in the case of M.Devendran v. The Director, Tamil Nadu Fire and Rescue Services, Egmore, Tamil Nadu, reported in 2006 (1) M.L.J.40, wherein a similar case has been considered by this Court and, ultimately, this Court held that Rule 17 (c) (i) (1) provides that where it is proposed to impose on a member of service any such penalty as is referred to in Clause (i) of the sub-rule on the basis of the facts, which have led to his conviction in a Criminal Court (whether or not he has been sentenced at once by such Court to any punishment), he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing penalty is passed.

4. In this case, the respondent, in the impugned communication, has pre-judged the things and provisionally come to the conclusion and dismissed the petitioner from service, which is contrary to the rule referred to above.

5. In view of the pronouncement of rule by this Court, any pre-determination is impermissible in law, for the purpose of imposition of penalty. Hence, the respondent is hereby directed to give full effect to the order passed by this Court in the above said decision, by treating the impugned memorandum dated, 03.01.2007, as a memorandum given to the petitioner, for making a representation as per Rule 17 (c) (i) (1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and consider the representation, if any submitted by the petitioner, in letter and spirit, and pass appropriate orders, without being influenced by any of the observations made in the previous paragraphs of the impugned memorandum. This direction has to be followed by the respondent scrupulously, in addition to the judgment rendered by this Court, which is reported in 2006 (1) M.L.J. 40.

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6. It is submitted by the learned counsel for the petitioner that the time for filing the objection expires tomorrow and, hence, the time may be extended.

7. Having regard to the fact that the petitioner has approached this Court, challenging the correctness of the impugned memorandum based on a judgment rendered by this Court as referred to above, a further time of fifteen days from today is granted to the

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petitioner, to file the objection, if any, to the memorandum, which is impugned in this Writ Petition.

8. Learned Government Advocate is directed to inform the same to the respondent that this Court has extended the time for filing objection to the impugned memo, by another fifteen days.

9. With the above directions and observations, this Writ Petition is disposed of. No costs. Consequently, the connected M.P.No.1 of 2007 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dixit

To

1.The Inspector General of Registration,
Chennai-28.

2.Mr.D.Srinivasan
Govt. Advocate, High Court, Madras.

+1cc to Mr.AL.Ganthimathi, Advocate Sr 5962

+1cc to Govt. Pleader Sr 6097

MRD (CO)
km/14.2.

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